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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,682	09/15/2000	Xiuling Li	1201.64722	1914

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EXAMINER

VINH, LAN

ART UNIT

PAPER NUMBER

1765

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/662,682

Applicant(s)

LI ET AL.

Examiner

Lan Vinh

Art Unit

1765

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-21.

Claim(s) withdrawn from consideration: _____.

8. The proposed drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. Other: _____

R sponse to Arguments

1. Applicant's arguments filed 10/7/2002 have been fully considered but they are not persuasive.

In traversing the examiner rejection, the applicants argue that since each of claims 1, 11 and 21 specifically state "A method for producing porous silicon" in its preamble, this statement should bear weight as to the purpose of the invention claimed, as clearly stated in MPEP& 2111.02. However, the MPEP also states that "If....and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significant to claim construction" (MPEP& 2111.02)

Applicants also traverse the examiner statement that claims 1, 11 and 21 do not require depositing a thin discontinuous layer of metal on an Si surface before etching because the claims, when read by one of ordinary skilled in the art, would be understood that the thin layer of metal is deposited before the step of etching the Si surface. The examiner disagrees because since claims 1, 21 recite the opened claim language of "comprising steps of" and claim 11 does not specifically required that the claimed steps have to be performed in a specific order, claims 1, 11 and 21 would be interpreted by the examiner that the claimed steps could be performed in any order.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Vinh whose telephone number is 703 305-6302.

The examiner can normally be reached on M-F 8:30-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech can be reached on 703 308-3836. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

LV
October 11, 2002

M. L. Utech
BENJAMIN L. UTECH
SUPERVISORY PATENT EXAMINER
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